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BY ECF

Honorable Paul A. Engelmayer  
United States District Judge  
United States Courthouse,  
40 Foley Square  
New York, New York 10007

Re: Permission Data, LLC v. Newsmax Media, Inc.  
14-cv-7129 (PAE)

Dear Judge Engelmayer:

We represent plaintiff Permission Data, LLC ("Permission Data"). I am writing to correct a prior representation that I made to the Court that I now know to be incorrect.

On April 20, 2015, I wrote to your Honor regarding a discovery dispute with defendant Newsmax Media, Inc. ("Newsmax") and non-party SDL, plc. At that time, Permission Data sought discovery of Newsmax's mail server records for five online marketing campaigns. The mail server records would reveal the results of Newsmax's attempt to mail to the email addresses generated through those five campaigns including information regarding hard bounces, blocked bounces, opens, clicks, unsubscribes and number of messages sent to each email address. The information is relevant because Newsmax claims that many of the email addresses were not valid email addresses. Permission Data was not seeking a list of the email addresses generated through the five campaigns – the email addresses were previously produced to Permission Data in discovery and they do not reveal the results of Newsmax's mailings to those addresses.

In the background section of my April 20 letter, I stated:

Pursuant to the Agreement, (a) Newsmax determined the maximum number of email addresses they would accept per day; (b) Newsmax was permitted to reject all email addresses that were either not valid or already known to Newsmax; (c) Newsmax reported to Permission Data the number of email addresses for which it would compensate Permission Data; and (d) Permission Data billed Newsmax monthly based on Newsmax's reports. It bears emphasis that Permission Data never had access to the information or the email addresses obtained by Newsmax

on its signup pages, or the results of Newsmax's attempt to contact the consumers by email.

I previously made the same assertion about Permission Data's lack of access to the email addresses in a letter dated October 7, 2014 which I submitted to the Court jointly with Newsmax's counsel in advance of the Initial Pretrial Conference.

My assertion that Permission Data did not have access to the email addresses is not correct. Permission Data and I learned for the first time on July 21, 2015 that the email addresses generated through one of the five campaigns was embedded at the ends of long data strands that are located in a rarely used column of data contained in Cake -- the third-party platform that Permission Data uses to track its marketing campaigns. The column of data containing the email addresses was not examined by Permission Data prior to July 21, 2015 and Permission Data had no reason to suspect that email addresses associated with Newsmax's marketing campaigns were contained in that column of data or anywhere else in Cake's database. Indeed, Permission Data does not view the column in which the data was stored in the regular course of its business because the column typically contains only a URL without personally identifiable information such as an email address. Unknown to Permission Data, Newsmax apparently set up one of its campaigns so that email addresses were passed in the URL from Newsmax's form page to the confirmation page.

The email addresses contained in the Cake database were discovered by accident on July 21, 2015 as an employee of Permission Data was investigating an unusual event reported by Cake. Mysteriously, approximately three hours after the email addresses were discovered by Permission Data, Newsmax's counsel sent a threatening letter to me accusing me of an ethics violation and intentionally misrepresenting to the Court Permission Data's access to the email addresses.<sup>1</sup>

Contrary to Newsmax's counsel's severe accusations of misconduct, I have not intentionally misrepresented any fact or other matter to this Court or any other court. Nonetheless, I want to correct my prior incorrect statement to the Court.

Respectfully submitted,



Sanford H. Greenberg

cc: James G. Sammataro (counsel for Newsmax, by ECF)  
Gerry Silver (counsel for non-party SDL, plc, by email)

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<sup>1</sup> Data from Cake, including the column of data containing the email addresses, was previously produced to Newsmax by Permission Data in or around March of 2015.